IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1904

DANIEL HOLDEN AND LIZZIE HOLDEN, BANKRUPTS,
Petitioners,
vs.
J. A. STRATTON, TRUSTEE,
Respondent.

No. 209

Brief for Respondent

STATEMENT.

The Holdens were joint traders (13, II.). When they failed and were proceeded against in bankruptcy, they scheduled liabilities of more than $28,000, but denied substantially that they had an asset to their names (15, 16). The cases against them being then consolidated (2), they acceded to the proceedings, asked to be declared bankrupts with due discharge, and claimed any exemptions allowed by law. (14 III.). *Each* of them was adjudicated a bankrupt (3).

As they denied all assets, the two life insurance policies were of course not disclosed, but these the

trustee has discovered and seeks to retain as trifles, at least, for creditors. The district court ordered the policies to be surrendered to the Holdens, the court of appeals the reverse.

The history of the policies is brief. In 1894 the Holdens had a single $10,000.00 policy that had been in force since May 21, 1890. At their request, in 1894, the company split that policy and took it up, a history of all of which the court may find on page 5 of the record in the form of matter "endorsed" on the face of the larger policy. Two new policies were issued instead. Though issued in 1894, however, they were both made to operate from May 21, 1890, the date of the one original, and are as follows:

They are both on the husband's life in favor of the wife, with *reversion in his favor* on her prior demise, and are both issued June 15, 1894. One issued fully paid for $2,000, required no further premiums (5, 8). The other is a $5,000, semi-tontine twenty-year dividend policy *dating back* to "May 21, 1890, date of former policy," (4) requiring only *ten* payments from *the latter date*, and giving further an option to *the husband* (not the wife), "or his assigns if creditors, "at the end of the twenty years to surrender it for $2,409.55 (7). The bankruptcy occurred in 1901. By that time, therefore, this policy was *paid up*, because ten years only of the premiums were required. The right to draw the $2,409.55, indeed, would not mature until ten years after that, that is to say, in 1910. At

the date of bankruptcy, in other words, the cash was fully earned, though its distribution must be awaited. During this remaining period the wife, as beneficiary, has an interest available by his death, but after this period the policy is his alone in cash if he wants it.

Our subject divides itself into three parts.

Part I. Supposing these not to be "cash surrender" policies under the proviso in Sec. 70 A, are they "property" capable of passing to the trustee?

Part II. Supposing these policies to be of the cash surrender sort, does Section 70 A, which would hold them for the trustee, give way to the state exemption clause?

Part III. Supposing the state exemption applicable, does the Washington law mean, (a) that endowment policies are exempt *to the insured debtor*, in his own life time, and (b) that any kind of policy whatever is exempt from the creditors of a *beneficiary* also?

PART I.

SUPPOSING THESE NOT TO BE "CASH SURRENDER" POLICIES, ARE THEY "PROPERTY" CAPABLE OF PASSING TO THE TRUSTEE?

By Section 70 (a) of the Bankrupt Act, it seems only fair to assume that all property having value was to pass to the trustee. *Page v. Edmunds*, 187 U. S. 596; *Fuller v. New York Fire Ins. Co.*, 184 Mass. 12; a mem-

bership in a stock exchange passing by the former, and fire insurance policies by the latter decision. This seems a proper assumption, since only that is exempt which in its nature is exempt, or which is expressly declared to be so. All insurance policies, therefore, are intended to pass to the trustee, where at all events they have passed the point at which they are non-forfeitable. In the case of life insurance policies that have a cash surrender value, these can be saved to the debtor by his paying the trustee the cash surrender amount. Now, Holden makes no such payment. On the contrary, he denies in his brief, though not by any pleading, that these are cash surrender policies at all. Does not this, then, leave the policies irrevocably in the hands of the trustee? No, he replies, it is not merely cash surrender policies that may be saved. These indeed require tender to be saved, but other policies do not have to be saved, for by the section in question they do not pass to the trustee to begin with, because, to quote the act, they are not "property which prior to the filing of the petition he could by any means have transferred, or which might have been levied upon and sold under judicial process against him."

In other words, the argument of Holden, though on this not clear, makes the language of the proviso about cash surrender policies creative language by which the trustee gets a right over any insurance. To us, the language is of the qualifying sort, so that the trustee, who gets every kind of insurance that has value at all,

is required to give back to the debtor only a cash surrender policy when it is redeemed in what it is good for in cash. The proviso creates, in short, a privilege in the debtor. Where cash value is ascertainable, the debtor may save the insurance; where it is not, the trustee is to retain it.

There are many kinds of insurance, of course, some that carry no unforfeitable value at all, no paid up resting point in whole or in part at any time. Others have paid up features in greater or less degree, others surrender features for cash. It is obvious that even the second class have a value that is fixed, a value clearly assignable by the proper parties, a value which the company itself, though not so required, commonly anticipates if requested, and redeems.

It will be seen, by referring to these two policies, that both are now forever paid up for their whole face values of $2,000 and of $5,000. (See our statement *ante*.) Of both policies it may therefore be said that they have a fixed value. The larger has a fixed value upon death of $5,000, a cash value during life, at any time after the twentieth year, of $2,409.55. Even the larger amount is inevitable, because it depends only upon death. The death amount is not payable to Mrs. Holden absolutely, for if she should die before her husband, he or his representatives would have rights in them again. He cannot assign the death interest without her consent, or she without his, but both together may, for the company, by the terms of the policy, inter-

poses no objection, and only asks (6, 8) that if an assignment be made, notice of it be left at the company's office. We have said that both Holden and the wife must join in assignment, but that Mrs. Holden alone has something of value here is clear, for she could assign her policy severally, and while this would not bind the husband in his lifetime, or his representatives, and would fail in case she died before him, yet if she survived him, the thing would be valuable to the assignee, though the husband's assent had not been given. However, it is perhaps inexpedient to expatiate on what the rights of the Holdens are to assign these policies severally, because they are both bankrupts here, and the creditors of both are the same, while over the assets of both there has been appointed a common trustee, in addition to which the right to the cash surrender at the twentieth year is his alone.

Returning to the subject of whether policies paid up like these, and yet not immediately cash surrender policies, will pass to the trustee, the following cases are directly in point:

In re Slingluff, 106 Fed 154 (D. C. 7, Md.).
In re Welling, 113 Fed. 189 (7th C. C. A.).
In re Diack, 100 Fed. 770 (D. C., N. Y.).
Ladd v. Union Insurance Company, 116 Fed. 878 (C. C., Mo.).
In re Boardman, 103 Fed. 783 (D. C. Mass.).
In re Martens, 131 Fed 972 (D. C., N. Y.).
Gould v. New York Life Ins. Co., 132 Fed. 927 (D. C., Ark.).

The collective judgment of these courts is entirely in favor of trustees having property in policies like those involved in the present case.

These citations are all the more in point because in those the policies were *not paid up for their tontine distribution.* They were, indeed, paid up for more than the three years necessary to save them from forfeiture by a small paid-up policy, but not for the twenty year cash.

In the second case cited, the court says, after deciding that the policies were not of the cash surrender sort:

> "But it does not follow, as was assumed by the court below and the referee, that because the policy does not fall within the terms of the proviso, the bankrupt has not property therein which passes to his trustee. By the terms of the policy, he was entitled to receive at the end of the tontine period, the cash payment stipulated in the contract. That is a vested contract right, contingent only upon his surviving the tontine period. The right is valuable, increasing in value with each successive payment of premium. The policy technically had not a "surrender value" within the meaning of the proviso; but it had an actual value, and that valuable right was right of property existing in the bankrupt. It is the plain provision of the bankruptcy law that all the estate of the bankrupt shall, by operation of law, be vested in the trustee, save such as is specifically excepted by the provisions of the bankruptcy law or by the law of the domicile of the bankrupt."

The policy in that case was a semi-tontine one on the bankrupt's life in favor of the wife, with, as here,

a proportionate paid-up policy upon default after three annual premiums. Such paid-up policy belonged *to the wife*, the whole insurance appears there to have been in her favor, and she was not, as here, a bankrupt herself, but it was held that *his* creditors could retain the policies (there being no state exemptions) because of two things—at the end of the twenty-year period it was he that could exercise the then cash options; second, if she died before him, the whole policy was his. Applying these circumstances to the present case, it is observable that our $5,000 policy had all these conditions, the $2,000 one the latter.

The other cases cited follow the Welling case with ample explanations and reasoning for doing so, and we have not been able to find any cases thus far in conflict with their view.

In *Gould v. New York Life Ins. Co.*, 132 Fed. 927, the cases cited above are approved and their many good reasons reinforced, though in that case the policy was not allowed to pass, because, as only one premium had been paid upon it, there was, so to speak, nothing to its credit.

We accordingly conclude that the paid-up policies in this case were a property right that passed to the assignee in bankruptcy, and are to be collected by him for the benefit of the creditors, unless the exemption features which we are about to discuss will restore them to the bankrupts.

PART II.

SUPPOSING THESE POLICIES TO BE OF THE CASH SURRENDER SORT, DOES SECTION 70 A, WHICH WOULD HOLD THEM FOR THE TRUSTEE, GIVE WAY TO THE STATE EXEMPTION CLAUSE?

The $2,000 policy, though paid up and constituting "property," is clearly not a cash surrender policy, for to no payment is the company obligated except upon death (8). This instrument, therefore, must be passed under the present head. It is clearly "property," on the one hand, but, on the other hand, clearly relegated, with all other property, to whatever may be allowed by state exemption, so we shall leave it now until we take it up under Part III.

This leaves us for discussion the policy for $5,000, and Part II. now subdivides itself into two inquiries:

(a) Is the $5,000 policy a "cash surrender" one within the act?

(b) If it be such, is the debtor saved from tendering its value by the state exemption clause of the bankrupt act?

(a) *Is the* $5,000 *policy a "cash surrender" one within the act?*

In the authorities cited by us under our first head to prove that these policies, whether cash-surrenderable or not, were at least property, will be found several that on the present head of "cash-surrender" appear

to be against us. The policies, they reasoned, though property, and going to the trustee where no state exemption existed, were not of the cash surrender sort. Now, it is not pleasant to applaud a case where it agrees with our needs, and yet to disapprove it where it does not, but this we shall do with what seems to us good reason.

Life insurance policies were originally written to mature only upon death. To withdraw anything during life was the happy conceit of later experience. Of those that allow cash to be realized during life two sorts appear, one permitting the withdrawal at any year after, say, the third, the other at a date at which premiums end. Both involve, of course, a surrender of the policy. Both continue the insurance for some period or other though the surrender is not made. Both give the surrender right, not at the outset, but only at a date when a paid-up interest is also earned, though no more premiums are to be paid.

The policy now in question, this for $5,000, gave Holden a right to "surrender" this policy and receive therefor *in cash* a sum of money. Why is this not a cash surrender policy? Because he has to wait twenty years to get it? Well, is there any policy written that does not require some period of waiting? At least three years is required in any that we have ever heard of.

Was not the language of the act intended to distinguish cash surrender policies only from those that are

called "straight life?" Why should it be given a narrow acceptation and be made to refer only to those that give the cash surrender right at an earlier date? In "straight life" policies it was plainly impossible to calculate value, but not so in those that upon some date or other made it obligatory on the company to accept a surrender for cash in a sum previously fixed, as here, though at the bankruptcy that date might not have matured. The amount could clearly be estimated. Perhaps the company would refuse to discount the liability. No matter. The bankrupt could buy the policy from the trustee. Its price would be a matter of mere computation, for on a day certain this company must take it up at par, or if the bankrupt declined to redeem it, the thing could be sold for cash by the trustee.

In the present instance the policy, remember, is fully paid. It was a "ten year pay—twenty year accumulation" one, as life insurance men would probably call it. To-day it is to the trustee immaterial that the surrender right is not matured. There is not another premium to be paid, no possibility of default. Any purchaser of securities will discount this policy to-day because he knows there is a day when his right to exchange it for cash is absolute.

Is it possible that a statute designed to make bankrupts pay in cash for cash surrender policies will be so construed as to allow this to be kept by them? They can turn it into cash the moment the trustee releases it.

Against our contention is *In re Welling* (113 Fed. 189), which we respectfully deem upon this point erroneous. It may, however, be fairly distinguished from our own case. Here the policy is fully paid and it is absolutely a fixed thing of value. There several premiums were yet to be paid and the company was not liable for any cash surrender at all and liable for no more than that paid-up proportionate policy which was earned after the three year period.

The extreme opposite of this view is that of District Judge Lowell (*In re Boardman*, 103 Fed. 783), who decides that an endowment policy which the company, though yet not compelled to do so, is willing and offers to redeem in cash is a cash surrender one within the act.

This may be going too far the other way. The middle view contended for by us seems unanswerable, that where the policy has reached a point when the cash surrender right is earned, when, though the date of payment is deferred, the company's obligation is fixed, that then the policy, having become discountable like the bond of any large corporation, is a cash surrender one within the language, the spirit, and the only reasonable intent of the enactment.

If this be so, the Holdens having made no tender of the cash value of this $5,000 policy, must lose it, unless it be saved by the state exemption, which we will discuss under Part III.

(b) *If this is a cash surrender policy, is the debtor saved from tendering its cash value by the state exemption clause of the bankrupt act?*

This is the second division of our Part II., and it is to be settled by a view of the whole act.

The question is, does the part of the act giving a bankrupt all the exemptions allowed by the state of his residence prevail over the insurance clause of the same act prescribing that to get back a cash surrender policy, he must tender its value?

It is useless for us to offer anything here. The Eighth and Ninth Circuit Courts of Appeals have exhausted this question with contrary results.

Steele v. Buel, 104 Fed. 968 (8th).
In re Scheld, 104 Fed. 870 (9th).
In re Holden, 114 Fed. 650 (9th).

The District Court of Maryland agrees with the Ninth Circuit.

In re Slingluff, 106 Fed. 154.

And in the Eighth Circuit District, Judge Shiras (before *Steele v. Buel*), was also against the state exemption.

In re Lange, 91 Fed. 361.

PART III.

SUPPOSING THE ESTATE EXEMPTION CLAUSE APPLICABLE, DOES THE WASHINGTON LAW MEAN THAT ENDOWMENT POLICIES ARE EXEMPT TO THE INSURED DEBTOR IN HIS OWN LIFETIME, AND THAT ANY KIND OF POLICY WHATEVER IS EXEMPT FROM THE CREDITORS OF A BENEFICIARY ALSO?

Here we are assuming that these policies though "property," and consequently passing to the trustee, are neither of them cash surrender policies, or that even if they are, the cash surrender proviso of the bankrupt act gives way to its state exemption clause, that the bankrupts did not have to tender cash for either, and that if these policies would be exempt in Washington they are exempt as against the court of bankruptcy.

The sweeping language of the Washington statute—"the proceeds or avails of all life or accident insurance shall be exempt from all liability for any debt"—is this language, we say, to be taken *literally?* If it is to be taken literally, then the following things must be considered as deliberately permitted by it: First, I may *as insured* buy paid-up policies in one or many payments, *payable to myself,* in my own lifetime, and hold them free from creditors; second, I may receive as *beneficiary,* from uncles, parents, or friends, the proceeds or avails of insurance in cash and hold them safe from my creditors; third, no limit being placed on

amounts, I may keep paid-up policies of my own and policies derived from others, be actually rich in this kind of thing, and yet immune from collection. In short, if taken literally, this Washington statute would permit a man to endow himself or a spendthrift nephew with an ample insurance and permit either the insured or his bankrupt nephew to keep a fortune from his creditors.

We shall accordingly argue: *First*, that this Washington exemption must be read in the light of such legislation generally as preceded it throughout the country. *Second*, that the words "life insurance" must be given their popular acceptation of a sum realizable *by death*, and that a technical meaning ought not to be given a law to make it work a plain injustice.

FIRST: PREVIOUS LEGISLATION ELSEWHERE.

It is a settled rule of construing statutes that, even when they are not ambiguous, absurdity or wrong will not be permitted if it can be avoided by reasonable interpretation. Statutes must receive a sensible construction. If a statute, however clear, is going to work wrong or injustice, the history and purposes of the legislation may be resorted to for relief. By this is not meant that a plain statute may be disregarded when courts discern a bad result. Not at all. A harsh statute must continue harsh when its rigors are not only in its words but in its intention. To ascertain that intention by

exploring the history of the act or, if it has no record available, then the history of kindred legislation, is the privilege of courts when a plain law is producing results that law-makers would not ordinarily intend.

In *Rector of Church of Holy Trinity v. U. S.* (143 U. S. 457), there was nothing whatever in the language of the act to abate its rigors. It was as sweeping and clear as any statute ever drawn. Yet it was clear that a result was about to occur which the makers of the law never would have permitted for a moment had they foreseen it. The history of the legislation was therefore examined. Why? To get at its intent. This is no violation of any rule of construction. On the contrary, the rule always has been to give it its intent. That intent must, to be sure, be accepted from its language, unless the language produces wrong or absurdity—then from its history and acknowledged purpose. A common error is to imagine that construction or interpretation is limited to phraseology and to the act itself in its various passages. This is true only when the result, though unsatisfactory, is not injustice or something beyond the spirit of the law.

In *U. S. v. Kirby* (7 Wall. 482), a similar rule was applied.

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the legislature intended exceptions to its language, which would avoid results of this

character. The reason of the law in such cases should prevail over its letter."

So in *Heydenfeldt v. Mining Co.* (93 U. S. 634).

> "If a literal interpretation of any part of it would operate unjustly, or lead to absurd results, or be contrary to the evident meaning of the act taken as a whole, it should be rejected."

In *Scott v. Deweese* (181 U. S. 202), this court affirmed the lower court (*Scott v. Latimer,* 89 Fed. 843), in deciding that when the national banking act said that unless all increase of capital was "fully paid" it should be void, it did not mean just that when the purposes of the entire measure were considered. The language was plain, there was nothing in the remainder of the act to contradict or confuse it, but the thing in its literal sense was deemed beyond the legislative intent.

Lee Kan v. U. S. (62 Fed. 914), is instructive.

There a statute relating to Chinamen spoke of such as did business "in his own name." A case arose of one who did business under an assumed appellation. The plain words "in his own name" were held to mean "on his own account." So in *Chinese Merchant's Case* (13 Fed. 605), the requiring of a certificate from all Chinamen was held not to apply to Chinese merchants, for though the act was plain enough in a literal sense, only *laborers* were actually intended. See also *Lau Ow Bew v. U. S.* (144 U. S. 47).

There is not one of these cases in which the statute on its face gave a whit more excuse for a milder meaning than the present.

Let us, accordingly, examine the history of this class of legislation, see when, why, and where it arose, and what the other states had been doing in respect to it by way of example to Washington. We may thus see what was probably in the minds of the Washington legislature when they passed this sweeping, this unqualified, exemption.

This we can do more intelligently by dividing the subject into two parts:

(a) The $5,000 policy.
(b) The $2,000 policy.

We thus divide the subject because in the former the policy is an endowment one, giving the husband cash in his lifetime at a period already nearly approached.

(a) *The* $5,000 *Policy.*

Thirty-five states and territories have passed laws exempting life insurance. Exempting it as a fund *for* whom? Exempting them *against* the creditors of whom?

Twenty-four states and territories have exempted the insurance as a fund, not for the insured, but for the beneficiary. These would thus exclude Holden, the

husband. The same states exempt this insurance only as against the creditors of *the insured.* This, by not including, would exclude Mrs. Holden also.

In other words, when this Washington statute was passed, twenty-four of these thirty-five statutes intended no such thing as that the insured should endow himself with life insurance for his own uses while living, and the same statutes, while making the insurance exempt to *the wife,* as against his creditors, made no such provision as that she might have creditors too and hold the proceeds free. These statutes are in Arkansas (*Sandels and Hills Code,* 1894, Sec. 4944); Delaware (*Code* 1893, Chap. 76, Sec. 3); District of Columbia (*Code* 1902, Sec. 1162); Florida (*Rev. St.* 1892, Sec. 2347); Hawaii (*Civil Laws* 1897, Sec. 1903); Illinois (*S. and C. An. St.* 1896, Vol. 2, p. 2259, Ch. 73, S. 189); Indian Territory (*Stat.* 1899, Sec. 3023); Maryland (*Gen. Laws,* Vol. 1, Secs. 8 and 9, p. 803); Michigan *Comp. Laws* 1897, Sec. 8695); Mississippi (*Ann. Code* 1892, Sec. 1964); Missouri (*Rev. Stat.* 1899, Vol. II, Sec. 7895, p. 1842); New Jersey (*Gen. Stat.* 1896, Vol. II, p. 2019); New Mexico (*Comp. Laws* 1897, Sec. 2042); New York (*Rev. Stat. Code and Gen. Laws,* 3rd ed. (Birdseye), Vol. I, p. 1046, *Domestic Relations Law,* Art. 3, Sec. 22); Pennsylvania (*Pepper & Lewis Dig.* 1896, Vol. I, Sec. 91, Col. 2383); Ohio (*Bates' Ann. Statutes,* 2nd ed., Vol. II, Secs. 3628, 3629); Oklahoma (*Stat.* 1903, Vol. I, p. 795); Rhode Island (*Pub. Stat.* Ch. 166, Sec. 21); South Dakota

(*Rev. Code Civil Pro.* 1903, Sec. 347, p. 929); South Carolina (*Code* 1902, Vol. I, Sec. 1824); Tennessee (*Ann. Code* (Grayson) 1895, Vol. I., Sec. 2294); Vermont (*Stat.* 1894, Sec. 2653); West Virginia (*Code* 1887, Chap. 66, Sec. 456).

Of these states some further restricted the thing by making such exemption to the beneficiary only when a wife, others only to a small sum, a few hundred dollars, under any circumstances.

See in comparison the sweeping monstrosity possible under a liberal interpretation of the Washington law, "the proceeds or avails of all life insurance." To the insured while he lives if he wants to endow himself, to the insured bankrupt from others if they choose to endow him, no limit either, in any amount.

Perhaps the other eleven states afforded a precedent for this? By no means. Five of them: Connecticut (*Rev. Stat.* 1902, Sec. 4548); Kentucky (*Stat.* 1894, Sec. 654); Massachusetts (*Rev. Laws* 1902, Vol. II., Chap. 118, Sec. 73, p. 1154); New Hampshire (*Pub. Statutes* 1901, Chap. 171, Sec. 1); Wisconsin (*Stat.* 1898, Sec. 2347); exempt the policy in the wife's favor only against creditors of the husband, like the other states, or of the person paying the premium. Of the remaining six states, two, North Carolina and Georgia, are too obscure to be made out upon this point at all.

This leaves four to be considered. Alabama (*Code* 1896, Vol. I, Sec. 2607); Iowa (*Code* 1897, Sec. 1805);

Kansas (*Gen. Stat.* 1901, Sec. 3463); Maine (*Rev. Stat.* 1903, Chap. 49, Sec. 106). In Alabama the beneficiary must be the wife (or conversely the husband). In Iowa and Kansas alone is the insured allowed to hold the policy exempt from his creditors, and in these states only can the beneficiary hold the policy against the beneficiary's own creditors. In Maine an exemption is allowed in both instances to $150 only.

Of thirty-five states, then, only two or three gave the insured an insurance exemption against his own creditors, only the same three an exemption against the beneficiary's own creditors too.

Accordingly, if we conceive the Washington legislature to have been adopting a sort of legislation as commonly employed, we must suppose them to have been influenced by the enormous bulk rather than by the minority. If they were following the minority, perhaps they would have followed their language. But this they did not do. The Iowa and Kansas statutes (which we set out below) were careful to describe their intent. Indeed, it was held in Iowa before this act of theirs that language more general in an earlier act would not be construed to give to the *beneficiary's wife* an exemption against her own creditors. *Smedley v. Felt*, 43 Iowa, 607; also in *Murray v. Wells*, 53 Iowa, 256, "It was not intended to exempt the avails of life policies from the debts of the beneficiaries therein."

We conclude, then, that the intention of the Washington legislature was not to go to lengths so unusual.

(b) *The* $2,000 *Policy.*

This is not an endowment policy, but there are three features to be noted immediately: (a) it is paid up fully, (b) though payable to the wife it becomes Holden's if she die before him, (c) Mrs. Holden also is a bankrupt here, so, even if we consider it her's alone, we place her back in the position Holden would be in as against his creditors. She is a bankrupt seeking to hold from *her* (not alone his) creditors a paid up policy on another's life.

Did the Washington law intend to permit this?

Viewed in the light of the legislation that preceded this elsewhere, we do not think it did. Our review of the other statutes makes it clear that this has not been intended, except in Iowa, Kansas, and possibly Maine, in which states particular language is employed to attain it, and in two of which a limit in amount is placed.

But it may be said these states do give this exemption to the wife against *her* creditors. Yes, but they say so in plain words. The trouble with this law of Washington is the excess inevitable from unbridled interpretation. If you deduce from it that Mrs. Holden can keep this from her own creditors, you must give every other beneficiary, whether able-bodied nephew, son, or friend, the same privilege. You cannot construe it for wives and stop. (*Murray v. Wells,* 53 Iowa, 256). A particular statute was deemed necessary in Iowa on

account of just the interpretation we are here maintaining.

This last interpretation is worth nothing as against the reckless dishonesty of purpose easily to be practised under a wide interpretation of the Washington law.

SECOND: WHAT IS "LIFE INSURANCE?"

Let us again turn to the language used, "Life Insurance." What is commonly understood by this term? Why not suppose it to have been used in its ordinary sense? In avoiding an almost absurd conclusion from a law, we may not only examine its history, but we may and should take its words in a common acceptation rather than in a technical one when the technical throws open the door to abuses and the common makes it reasonable. What do people mean by life insurance? Is it not a fund realizable by *death?*

The object of these laws manifestly was to save families from the loss of *both* the insurance and the father —that is, that on his *death* they should not lose also his life insurance. Among all the statutes we have cited there are few indeed that do not make death a condition expressly or impliedly. The court will be struck by this almost uniformity on examination of these laws.

The writer of this brief has not the slightest doubt that what the Washington legislation had in view was to protect widows, to save them from the debts of a *deceased* husband assured. Never did the members

dream that in taking from creditors "all life insurance," they meant its cash proceeds during the life of the insured. Never did they intend that she could keep the money, perhaps a small fortune, from her husband's and her own creditors and he alive besides.

Thus, if merely the wife were in question here, the sweeping interpretation of the words would work a wrong, a wrong which scarcely one of the thirty-five states mentioned permitted in any degree whatever.

But here is more wrong. The husband himself on this interpretation, nay an *unmarried* man, may sequester policies in unlimited sums for use in cash during his own life and keep it from creditors under a statutory exemption! This is preposterous. "Life insurance" must have meant a mortuary fund, the popular signification, and originally the only one.

> "A policy of life insurance is a contract in consideration of certain payments to the insured, for which it undertakes to pay a certain sum upon the death of the person whose life is insured."

This is Kent's definition quoted approvingly in *Talcott v. Field,* — Neb. —, 52 N. W. 400, which says of an endowment policy.

> "It is more like an investment than insurance, the latter being a mere incident. * * * The transaction partakes more of the character of a loan."

It is a settled rule of statutory construction that words are employed in their common acceptation rather than in a technical one.

> "The popular and received import of words furnishes the general rule for the interpretation of public laws." (*Maillard v. Lawrence*, 16 How. 251); "The legislature must be presumed to use words in their known and ordinary signification unless that sense be expelled by the context." (Story in *Levy v. M'Cartee*, 6 Peters 102).

Why this rule should be departed from here to work palpable opportunity for injustice which the lawmakers surely would not have designed, we cannot see.

CONCLUSION.

It is worth while asking whether the Washington law which imposes no pecuniary or other limit upon an exemption is constitutional under the organic law of that state. The constitution of Washington provides:

> "The legislature shall protect by law from forced sale *a certain portion* of the homestead and other property of all heads of families."

If "a certain portion" means a reasonable amount only, then, it seems to us, that an unlimited exemption would be void. It was in this way that a statute exempting insurance without limit was gotten rid of in Minnesota (*How v. How*, 59 Minn. 415, 61 N. W. 456). And in South Dakota the same conclusion was reached (*Skinner v. Holt*, 9 S. D. 427, 69 N. W. 595).

Considering that by the unanimous decisions of the federal courts in bankruptcy *all* insurance goes primarily to the trustee and that its interpreted theory is not to let the bankrupts have it except where it is of the cash surrender sort and can be redeemed in cash by the debtor, a sweeping interpretation of the Washington exemption seems utterly abhorrent to the federal enactment.

Respectfully submitted.

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